

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS**

IN RE: OHIO EXECUTION  
PROTOCOL LITIGATION

: Case No. 2:11-cv-1016

District Judge Edmund A. Sargus, Jr.  
: Magistrate Judge Michael R. Merz

This document relates to:

All Plaintiffs, but particularly David Myers :

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**ORDER**

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This consolidated § 1983 method of execution case is before the Court on public reports that Plaintiff David Myers has been granted a new trial by the Greene County Court of Common Pleas (Visiting Judge Jon Hein presiding). If this decision has resulted in vacation of the judgment in his case, it appears to the Court, at least *prima facie*, that he no longer has standing to litigate this case. That would require his dismissal as a plaintiff, albeit without prejudice to his renewed intervention should he be convicted and re-sentenced to death after a new trial. It would, however, be premature to make that ruling at this point in time until the status of his case in the Ohio courts is clarified.

In Standing Order No. 2<sup>1</sup> the Court has required that “when any attorney representing a party in such a case files a paper in the United States Court of Appeals or the United States Supreme Court, the attorney shall contemporaneously electronically file a copy of that paper in this Court.” Much of the litigation affecting this Court’s capital docket is now occurring in the Ohio courts.

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<sup>1</sup> Available on the Court’s internet site.

(See, e.g., Wogenstahl v. Mitchell, Case No. 1:99-cv-483). The Court is reluctant to expand the burden on counsel by extending Standing Order to the papers filed in the Ohio courts, but hereby invites comment (to be filed in this case) on whether that should occur. Pending any revision to Standing Order No. 2, counsel for Plaintiff Myers is respectfully requested to file with this Court a copy of Judge Hein's decision and to keep this Court currently apprised of any further developments in that case.

August 21, 2024.

s/ *Michael R. Merz*  
United States Magistrate Judge